

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 621(a)(1) of the	)	MB Docket No. 05-311
Cable Communications Policy Act of 1984 as	)	
amended by the Cable Television Consumer	)	
Protection and Competition Act of 1992	)	

**REPLY COMMENTS  
OF THE CITY OF VENTURA, CALIFORNIA**

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## SUMMARY

The City of San Buenaventura, California (“City” or “Ventura”) respectfully submits the following reply comments in response to the above captioned Notice of Proposed Rulemaking, FCC 05-189 (“NPRM”).<sup>1</sup>

Ventura’s experience with the cable franchise process has been a balancing act. The City is served by two cable systems which do not compete directly, as each operator sought to serve a distinct territory within the City. To address this situation, the City devoted significant resources and time to developing a franchise process that would:

1. Treat each operator fairly, so that neither would be advantaged or disadvantaged in providing service in the City, and
2. Protect the public and ensure that the needs and interests of the City were satisfied.

The City's experience suggests that accomplishing such a balancing act is a much more difficult task than the Commission may assume. The challenges arise in that every entrant comes to a community with a unique business plan shaped by: the technologies the entrant plans to use, the order in which it hopes to build, the markets it intends to target, and the manner in which it intends to roll-out services. While being supportive and understanding of these unique characteristics, a franchising authority must also require that the entrant adjust or implement its plans in a way that satisfies overriding public interests. Based on its franchising experience, Ventura can state that any attempt to remotely regulate the franchise process will undercut

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<sup>1</sup> *In the Matter of implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984, as amended by the Cable Television and Consumer Competition Act of 1992*, MB Docket No. 05-311, Notice of Proposed Rulemaking (released November 18, 2005).

serious negotiations as parties will be first and foremost concerned with complying with the federal rules rather than investigating means to foster entry on a fair basis. Moreover, a set of federal standards – which confine the ability of the parties to negotiate freely – will be counterproductive since they inherently fail to recognize that community needs and interests vary from community to community. Over time, federal rules are likely to impose unnecessary conditions in some communities, while preventing needs and interests from being satisfied in others.

## **I. BACKGROUND**

The City of San Buenaventura was founded as one of nine original California missions. Some two hundred and fifty years later, Ventura is a classic Southern California beach town of 105,000 located on the Pacific Ocean northwest of Los Angeles. The city also serves as the County Seat for Ventura County, California.

Ventura is a full-service city with a City Manager as its Chief Administrative Officer. The political leadership of Ventura is comprised of an elected Mayor and six council members.

Despite rampant growth over the past decade (over 7% growth from 1990 to 2000 Census), Ventura aims to be a leader in the “smart growth” movement in the future. The City seeks to capitalize on its infrastructure and near-by major airports and deep-water ports to be the choice of businesses involved in domestic and international trade. Ventura is also one of California’s new art cities. Ventura’s civic and business leaders have embarked on an ambitious partnership to ensure that Ventura retains its premiere position as an exciting and vital place to work, raise a family, and enjoy life. Each of these goals the City is critically dependent on access to broadband infrastructure and the types of services broadband networks can support. The City therefore has always encouraged entry of competing, broadband delivery systems and is

supportive of marketplace inducements that would make affordable broadband a reality for all of Ventura's citizens.

**II. VENTURA'S EXPERIENCE AS A FRANCHISING AUTHORITY DEMONSTRATES THAT LOCAL GOVERNMENTS ARE BEST POSITIONED TO MEET COMMUNITY NEEDS AND INTERESTS WHILE BALANCING THE INTERESTS OF COMPETING PROVIDERS.**

Ventura's experience in franchising is instructive as to the problems that would attend adoption of federal rules governing cable franchising. The City of Ventura maintains non-exclusive cable television franchises with two cable companies: Adelphia Communications and Wave Broadband.<sup>2</sup> Adelphia Communications serves the east side of Ventura, while Wave Broadband serves the western portion of the City. The City's franchise experience with these two providers demonstrates the benefits of local franchising not only for consumers, but also for competing providers.

**A. Lesson Number 1: Local Needs and Interests Vary, and Flexibility is Required To Meet Those Needs and Interests and Provide for Fair Competitive Entry.**

Through the ascertainment research process outlined by Congress in 47 U.S.C. § 546, Ventura established the community's Public, Educational and Governmental (PEG) needs. Those needs were not identical to needs and interests that had been the focus of franchises in surrounding communities. The number of PEG channels, the I-Net requirements, and the ongoing PEG support reflected the composition of the community and its plans for the future.

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<sup>2</sup> Wave's website describes the company as: "Wave Broadband is a cable and broadband services company currently serving approximately 87,000 cable and high speed Internet customers in Western Washington and Southern California. Wave is headquartered in Kirkland, Washington with regional offices in Ventura and Cerritos, CA as well as Port Orchard, LaConner, and Port Angeles, WA. Wave has also recently announced its forthcoming acquisition of a system in Walnut Creek/Concord, CA serving about 53,000 cable, high speed Internet and phone customers. Owned and operated by local industry leaders, our customers are supported by decades of cable know-how." (<http://www.wavebroadband.com/>)

Moreover, when it sought to obtain support for those needs on an equitable basis from the two incumbent providers, the City found itself in a quandary. One operator's business plan required such obligations be met on an ongoing basis; the other provider's business plan required that it make all such contributions on an upfront basis.

Rather than impose a one size fits all contribution regime, the City sought to make both operators' business plans a success, while at the same time ensuring the community's current and future cable needs and interests were met. The City sat down with both operators and worked out a combination of up front and ongoing payments to support both the initial capital construction and ongoing replacement of facilities and equipment. At the end of the process, all parties agreed the outcome was fair. Still, it took several months to arrive at this mutually agreed to solution.

The ascertainment process further revealed that one of the two cable systems had been installed and operated in a manner that was not consistent with safety codes. Additionally, one of the providers, but not the other, had significant customer service problems.

The City worked with both operators to develop requirements that would require each to solve the specific problems each faced, without imposing unnecessary requirements on the other. This process, too, was not simple. Each operator had to be convinced that the City's ascertainment study was correct, and then each had to work with the City to develop viable means of addressing their specific noncompliance issue.

Nor did the City rely only upon negotiations to address these deficiencies. As contemplated by the Cable Act, the City pursued the formal renewal process at the same time as it pursued a negotiated solution. That process had the salutary effect of requiring the City to conduct an ascertainment to identify local needs and interests. However, that formal application

process did *not* resolve the renewal issues. Had the City been required to follow rigid timelines or procedures in the formal process, it is unlikely that the negotiations would have been successful.

The City offers this success story in the hope that the FCC will appreciate that by creating artificial deadlines or regulatory tests at the federal level for the grant of a franchise, let alone the terms of such a franchise, creative solutions such as that achieved by Ventura and operators such as Adelphia and Wave could be lost. The alternative to the creative and cooperative solutions achieved in Ventura would be that the City would be forced to unilaterally develop bureaucratic solutions to problems best solved through individualized negotiations.

**B. Lesson Number 2: Local Governments Devote the Time to Get It Right.**

Ventura is grateful to its cable partners for the investments they make in our community on a daily basis. Still, the business demands on the operators must be tempered on occasion by the oversight and, if need be, enforcement of franchise terms by the local franchising authority. As outlined above, the City and its two incumbent operators were able to reach an accommodation on the issue of funding community needs, in part because the City had devoted the time to conduct an ascertainment process to identify cable-related needs and interests. The ascertainment was not something that could have been conducted in a few days or weeks. It involved focus groups and public hearings; analysis of operating data from the operators; reviews of subscriber complaints; and inspections of the existing systems.

Had the formal ascertainment process been limited or chilled by a federally mandated timeline, it is hard to imagine how such a federally-mandated rule or decision would have helped resolve the issues facing the parties in Ventura in a manner in which all interests were served.

While a full ascertainment would not be required for a new entrant, the point is that the process of identifying and meeting needs and interests is not simple and often does take time. It is therefore imperative that the FCC not establish deadlines that prevent the parties from conducting the sorts of investigations that help define issues and, ultimately, help resolve them.

**C. Lesson Three: Being a Franchising Authority is a Hands-On-Job.**

The final lesson the City seeks to impart to the Commission from its experiences as a franchising authority is that franchising is not a job that can be conducted remotely. There are times that one has to get their hands dirty, and there is an ongoing requirement of being on the job. While technology makes many jobs capable of being conducted remotely, franchising does not fit into this category.

The City's experiences are that operational issues that the City did not anticipate being troublesome became significant franchise issues. As noted above, a physical inspection conducted as part of the ascertainment process revealed that one system had significant safety code compliance issues, while the other cable operator's system did not.

The resolution of these public safety issues was complex, and required the City to develop a different process for different providers. While the City could not permit the offending party to continue to jeopardize public safety, the City did not want to force the operator which had complied with code and safety rules to incur unnecessary inspection and correction expenses. It is hard to imagine how a federal standard could have properly balanced the interests involved. A "one size fits all" rule would have resulted in either a waste of resources by a compliant party, or an improper reward to a non-performing party.



### III. THE BELLS SEEK BARGAINING LEVERAGE, NOT COMPETITIVE ENTRY.

A review of the docket reveals that no prospective or incumbent cable operator has filed any negative allegations with respect to the franchising process conducted by Ventura. One reason for this is that neither of the major ILECs providing service in California, both of whom are the leading proponents of FCC, Congressional, and California state legislative language, has requested a cable franchise from Ventura.

Ventura nonetheless has reviewed other communities' negotiations with the ILECs in an attempt to be informed and prepared to expedite any request for a franchise through the franchise process established by Ventura and the Congress.

Ventura would therefore like to call to the Commission's attention a recently executed "Public Benefits Agreement," not a cable franchise, between AT&T California and the City of San Ramon. While Ventura is not critical of the City of Ramon for executing the document, Ventura would note that the agreement is instructive in that the company does not seek competitive entry but rather bargaining leverage.<sup>3</sup>

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<sup>3</sup> The recitals from the AT&T California – San Ramon agreement reflect this demand. They read:

#### **RECITALS**

A. AT&T California is an established provider of telecommunications services operating under a state franchise, and intends to provide enhanced broadband services including IP-enabled video services and programming to City residents over its network facilities.

B. AT&T California asserts that in California the franchise it has from the state pursuant to Section 7901 of the Public Utilities Code encompasses the network enhancements that AT&T California contemplates within the City and that AT&T California may offer broadband services, including IP-enabled video services and programming, within City without legal requirement for a franchise or license from City; and

C. AT&T California believes there is no legal authority by which it or its new broadband services to be provided over its network may be subject to a local franchise. The City acknowledges and believes in good faith that the law is not established that AT&T California, in offering these new broadband services over its network, is subject to a local franchise requirement; and

An example of this leverage may be found in AT&T's demand that the local community surrender any claims that it may have as to the services being offered by the company being characterized as cable services before the company will provide service in the community.<sup>4</sup>

Despite the company's demand for such leverage as opposed to negotiations, the City would welcome an offer, and has established a franchising process that would allow a local exchange provider to enter the market as a cable operator or as the operator of an open video system. The City has never received an application from a local exchange carrier. The City has on its calendar for consideration at the next City Council meeting a resolution welcoming ILEC franchise applications. The resolution will be forwarded to the Commission upon its adoption.

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D. AT&T California believes, and City concurs, there is no definitive authority that AT&T California, by offering IP-enabled video services and programming, over its existing and enhanced network in City, is a "Cable Operator" as defined in Title VI of the Communications Act of 1934, as amended ("Title VI"), and, correspondingly, AT&T California believes, and City concurs, there is no definitive authority that the network facilities and services to be offered by AT&T California over such network facilities constitute a "Cable System" or "Cable Service" under Title VI; and

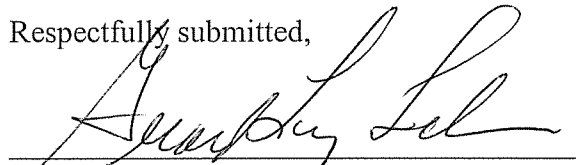
E. AT&T California believes, and City concurs that there is no definitive authority, that use by AT&T California of its network to provide IP-enabled video services and programming, among other services, constitutes construction of a "community antenna television system" as set forth in Section 53066 *et seq.* of the California Government Code....

<sup>4</sup> *Id.*

#### IV. CONCLUSION

The City's experience shows that adoption of federal rules is unlikely to be helpful in meeting community needs or fostering the development of unique business plans by competing cable operators. For these reasons and those indicated above, the Commission should decline to intrude into local cable franchising.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Joseph Van Eaton", written over a horizontal line.

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